

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL J. MONROE,

Plaintiff,

-against-

COUNTY OF ROCKLAND; CORRECTION
OFFICER S. LIBRIZZI, BADGE #432;
CORRECTION OFFICER N. MISURDA,
BADGE #476,

Defendants.

21-CV-2472 (CS)

ORDER OF SERVICE

CATHY SEIBEL, United States District Judge:

Plaintiff, currently detained at Rockland County Correctional Center, brings this *pro se* action under 42 U.S.C. § 1983. He alleges that Defendants were deliberately indifferent to a risk to him of serious harm from another inmate. By order dated April 2, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").¹

DISCUSSION

A. Service on Individual Officers

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). The County of Rockland has already been served, but now that the individual officers have been identified, (Doc. 15), and named in a Second Amended Complaint, (Doc. 17), they need to be served.

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(b)(1).

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and amended complaint until the Court reviewed the amended complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the amended complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Salvatore Librizzi and Nicholas Misurda through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon the defendants.

As previously ordered, (Doc.16), all Defendants may respond to the Second Amended Complaint on the date the last-served Defendant is required to respond.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. Local Civil Rule 33.2

Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery

requests are available on the Court's website under "Forms" and are titled "Plaintiff's Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents." Within 120 days of service of the complaint, Defendants must serve responses to these standard discovery requests. In their responses, Defendants must quote each request verbatim.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff. The Clerk of Court is further instructed to complete the USM-285 form with the address for Defendants Salvatore Librizzi and Nicholas Misurda, and deliver to the U.S. Marshals Service all documents necessary to effect service.

Local Civil Rule 33.2 applies to this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: August 5, 2021
White Plains, New York



CATHY SEIBEL
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

Salvatore Librizzi
Control Room Officer
Badge #: 432
Rockland County Sheriff's Office
55 New Hempstead Road
New City, New York 10956

Nicholas Misurda
Housing Unit Officer
Badge #: 476
Rockland County Sheriff's Office
55 New Hempstead Road
New City, New York 10956